

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

**WESTAIR COMMUTER
AIRLINES, INC., d/b/a
UNITED EXPRESS**

FAA Order No. 97-13

Served: February 26, 1997

Docket No. CP96WP0102

ORDER SEALING RECORD

After Respondent Westair Commuter Airlines, Inc., d/b/a United Express (Westair), withdrew its notice of appeal on January 6, 1997, the Administrator dismissed the appeal. In the Matter of Westair Commuter Airlines, Inc., d/b/a United Express, FAA Order No. 97-5 (January 31, 1997). In its letter of withdrawal, Westair stated, "Enclosed is a copy of [Westair's] letter to FAA Counsel evidencing tender of the civil penalty in full satisfaction of this matter. It is requested that the enclosed letter be made a part of the public docket." Westair's letter was filed in the administrative record, as it would have been regardless of whether Westair had made such an explicit request.

Complainant timely filed, on January 17, 1997, an opposition to Westair's request to make the letter part of the public docket. However, due to an administrative error, the Administrator was not aware of Complainant's opposition until after Order No. 97-5 was issued. In Complainant's opposition, Complainant stated as follows:

Complainant vigorously objects to this letter being made a part of the public record. This letter is not a pleading, motion, or other document that can suitably be included in the public record. In addition, the letter contains arguments asserting that the Honorable Ann Z. Cook erred in her initial oral decision of November 15, 1996. Respondent has withdrawn its appeal and must not be permitted to submit further arguments concurrent with or after the appeal withdrawal. Once the Respondent withdrew its appeal, Administrative Law Judge Cook's decision became final for the record. The record must be clear and unequivocal that Judge Cook's decision was final and the final word. Finally, the four-page letter contains sensitive security information that pose (sic) the risk of undermining the security and safety of persons traveling in air transportation.

Complainant's argument that Westair should not be permitted to submit further argument with its withdrawal of appeal lacks merit.¹ As for Complainant's argument that security requires exclusion of the letter from the record, this argument seems disingenuous, given that Complainant has never moved to seal the record of this case. The rest of the record contains security information that is equally as sensitive as that contained in the letter.

Westair's letter does contain sensitive information that under 14 C.F.R. Part 191 should not be available to the public. Part 191 prohibits disclosure of a record if doing so would be detrimental to the safety of persons traveling in air transportation of intrastate air transportation. 14 C.F.R. § 191.5(c). Consequently, the record of this case is hereby sealed under authority of Part 191.² Although I am sealing the record *sua sponte* in this case, Complainant is advised that in the future, where similar security concerns are present, it should move at the earliest opportunity to seal the record.



BARRY L. VALENTINE
Acting Administrator
Federal Aviation Administration

Issued this 25th day of FEBRUARY, 1997.

¹ Whether such argument will be considered by the Administrator is another matter.

² If a member of the public requests access to the record in this case, the sensitive portions will be redacted in accordance with 14 C.F.R. § 191.7 at that time. (Section 191.7 provides that if a record contains information that cannot be disclosed, but also contains information that can be disclosed, the latter information will be provided for public inspection and copying.)